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14 MINDEN PICTURES, INC.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14

15 MINDEN PICTURES, INC.,  
16 a California corporation,

17 Plaintiff,

18 vs.

19 HOUGHTON MIFFLIN  
20 HARCOURT PUBLISHING  
21 COMPANY, and  
22 R.R. DONNELLEY & SONS  
COMPANY,

23 Defendants.  
24

Case No.

COMPLAINT FOR DAMAGES,  
INJUNCTION, AND IMPOUNDMENT

DEMAND FOR JURY TRIAL

25 Plaintiff Minden Pictures, Inc. (“Minden Pictures”) for its Complaint  
26 against Defendants Houghton Mifflin Harcourt Publishing Company  
27 (“HMH”) and R.R. Donnelley & Sons Company (“Donnelley”) alleges:  
28

**STATEMENT OF ACTION**

1  
2       1.     This is an action for copyright infringement and fraud brought  
3 by Plaintiff Minden Pictures, the holder of copyrights to the photographs  
4 described hereafter and originally licensed for limited use by Defendant  
5 HMH, against Defendants for unauthorized and impermissible uses of  
6 Minden Pictures photographs without its authority or permission.

**JURISDICTION AND VENUE**

7  
8       2.     This is an action for impoundment, injunctive relief, statutory  
9 damages, monetary damages, punitive damages, and interest under the  
10 copyright laws of the United States and California common law.

11       3.     This Court has jurisdiction over the subject matter of this action  
12 pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (copyright).

13       4.     Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a)  
14 and (b) and 28 U.S.C. §§ 1400(a).

**PARTIES**

15  
16       5.     Minden Pictures is a California stock photography agency  
17 engaged in licensing photographic images to publishers, including HMH.

18       6.     Defendant HMH is a publisher of educational textbooks, with its  
19 primary office in Boston, Massachusetts. At all times pertinent to the  
20 allegations herein, HMH acted through its agents, imprints and divisions.  
21 HMH sells and distributes textbooks in California and throughout the United  
22 States, including the publications in suit and ancillary materials, in which  
23 Minden Pictures photographs are unlawfully reproduced.

24       7.     Defendant Donnelley is the world's premier full-service printer  
25 with its global headquarters in Chicago, Illinois.  
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**FACTS COMMON TO ALL COUNTS**

8. Minden Pictures is a copyright owner of each of the attached photographic images ("Photographs"), whose registration status with the United States Copyright Office is set forth in Exhibit 1 (for filing divided into 1A through 1H).

9. Between 1996 and 2009, Minden Pictures sold HMH limited licenses to use copies of the Photographs in numerous educational publications. The permissions Minden Pictures granted HMH were expressly limited by number of copies, distribution area, language, size and duration as set forth in Exhibit 1.

10. Minden Pictures granted the limited use licenses in response to HMH's representations to Minden Pictures that the use of the Photographs would not exceed the limitations contained in HMH's permission requests (for examples, see Exhibits 2, 3, 4, 5, 6, 7, and 8), which set forth the identity of the persons making the misrepresentations, the time, place and content of the misrepresentations, and the method by which the misrepresentations were communicated to Minden Pictures.

11. Upon information and belief, at the time HMH represented to Minden Pictures that it needed specified, limited permission to use the Photographs identified in Exhibits 2, 3, 4, 5, 6, 7, and 8, HMH knew its actual use under the licenses would exceed the permission it was requesting and paying for.

12. Upon information and belief, HMH intended by its misrepresentations to obtain access to the Photographs identified in Exhibits 2, 3, 4, 5, 6, 7, and 8 at a lower cost than it would have paid had it been

1 honest in its dealings with Minden Pictures and to conceal the copyright  
2 infringements that followed. HMMH's false and misleading representations  
3 deceived Minden Pictures, and concealed the copyright infringements that  
4 followed.

5 13. Minden Pictures relied to its detriment on the truthfulness of the  
6 express limitations contained in HMMH's license solicitations in establishing  
7 its license fees.

8 14. Upon information and belief, HMMH exceeded the permitted uses  
9 under the terms of the limited licenses granted by Minden Pictures.

10 15. When HMMH used the Photographs identified in Exhibits 2, 3, 4,  
11 5, 6, 7, and 8 without authorization, HMMH had a duty in equity and good  
12 conscience to disclose those uses to Minden Pictures. This is especially so  
13 because HMMH knew precisely when its use of the Photographs identified in  
14 Exhibits 2, 3, 4, 5, 6, 7, and 8 exceeded the applicable license limitations, but  
15 Minden Pictures had no such knowledge nor any reason to assume HMMH was  
16 being deceitful in the uses it was making of the Photographs identified in  
17 Exhibits 2, 3, 4, 5, 6, 7, and 8. HMMH never disclosed its unauthorized uses to  
18 Minden Pictures or sought additional permission to use the Photographs.

19 16. HMMH's fraud was effective and worked as intended. For years  
20 the infringements that followed HMMH's fraud were concealed. But for  
21 Minden Pictures' fortuitous discovery of HMMH's fraudulent acts, HMMH's  
22 infringements would still be concealed, as HMMH intended.

23 17. In 2009, Minden Pictures, for the first time, had reason to  
24 suspect HMMH was using the Photographs in unlicensed, unauthorized, and  
25 uncompensated ways in the publications in suit.

26 18. Upon information and belief, HMMH's practice of under-licensing  
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1 extended far beyond the publications in Exhibit 1. This practice extended to  
2 thousands of visual art licenses in hundreds of other HMH publications.  
3 While the lost licensing fee from any individual license is relatively small,  
4 millions of infringing textbooks have sold, generating billions in revenue and  
5 profits. HMH's business model, built upon a foundation of pervasive fraud,  
6 deprived Minden Pictures and thousands of other visual art licensors their  
7 rightful compensation and unjustly enriched HMH with outlandish profits in  
8 the process.

9 19. Upon information and belief, Donnelley was one of the printers  
10 of the publications in suit, and it printed copies in excess of the licenses  
11 granted by Minden Pictures. Donnelley earned profits from such printings.

## 12 **COUNT I**

### 13 **COPYRIGHT INFRINGEMENT AGAINST HMH**

14 20. Plaintiff incorporates herein by this reference each and every  
15 allegation contained in each paragraph above.

16 21. The foregoing acts of HMH constitute infringements of  
17 Plaintiff's copyrights in the Photographs in violation of 17 U.S.C. § 501 *et*  
18 *seq.*

19 22. Plaintiff suffered damages as a result of HMH's unauthorized  
20 use of the Photographs.

## 21 **COUNT II**

### 22 **FRAUD AGAINST HMH**

23 23. Plaintiff incorporates herein by this reference each and every  
24 allegation contained in each paragraph above.

25 24. The foregoing acts of HMH constitute common-law fraud with  
26 respect to the photographs identified in Exhibits 2, 3, 4, 5, 6, 7, and 8.  
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### COUNT III

26. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

28. Plaintiff suffered damages as a result of Donnelley's unauthorized printing of its Photographs.

1. A preliminary and permanent injunction against Defendants and anyone working in concert with them from copying, displaying, distributing, or selling Plaintiff's Photographs described in this Complaint, as well as those not included in suit.

3. Actual damages and all profits derived from Defendants'

1 infringing use or, where applicable and at Plaintiff's election, statutory  
2 damages.

3 4. Reasonable attorney's fees.

4 5. Court costs, expert witness fees, interest and all other amounts  
5 authorized under law.

6 6. Punitive damages against Defendant HMH.

7 7. For such other and further relief as the Court deems just and  
8 proper.

9 DATED: July 22, 2010.

10  
11 Plaintiff Minden Pictures, Inc.  
12 by its attorneys,

13 s/ Christopher Seidman  
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27  
28 **JURY TRIAL DEMAND**

Plaintiff demands a trial by jury of all issues permitted by law.